

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First named inventor: Joseph S. Ng

Docket No. 04-0143

Serial No.10/791,998

Filed: March 2, 2004

Examiner: Jamisue A. Plucinski

Art Unit: 3629

Title: NETWORK-CENTRIC CARGO SECURITY SYSTEM

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the non-final rejection mailed 2 Sept. 2009 in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated in the attached sheets.

A petition for a TWO month extension of time is included. The office action set a three month shortened statutory period for response. The extended period for response expires on Feb. 2, 2010.

Respectfully submitted,
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Date: Jan. 29, 2010

REMARKS

Claims 27-33 are pending and rejected. The non-final office action dated September 2, 2009 indicates that base claim 27 remains rejected under 35 USC §102(e) as being anticipated by Webb U.S. Publication No. 2004/0257225 and that claims 27-31 remain rejected under 35 USC §102(e) as being anticipated by Peel U.S. Publication No. 20080117040. The office action also indicates that base claims 32 and 33 are rejected under 35 USC §103(a) as being unpatentable over Peel in view of Koenc U.S. Publication No. 20040182936. Base claims 32 and 33 are further rejected under 35 USC §112, second paragraph, as being indefinite. These rejections are based on legal errors and the omission of an essential element needed for a prima facie rejection.

Base claim 27 recites a system for maintaining security of a cargo container during shipment from an origination point to a destination. The system comprises means for determining geographic location of the cargo container during shipment from the origination point to the destination; and a battery-powered container security unit (CSU) for the container, the CSU reporting on status of the cargo container during the shipment, wherein frequency of the reporting is a function of the geographic location of the container.

Base claims 32 and 33 also recite frequency of reporting that is a function of the geographic location of the container.

Legal Error in '102 and '103 rejections

The office action commits legal error by ignoring claim language. Specifically, the office action ignores the feature "wherein frequency of the reporting is a function of the geographic location of the container."

The office action admits to ignoring the feature about frequency of the reporting being a function of the geographic location of the container. Pages 3-4 of the office action allege that the frequency of reporting is an "intended use." It does not explain how or why the reporting frequency is an intended use.

The frequency of reporting is not an "intended use." It is a functional feature that allows a container security unit to conserve precious battery power.

"Intended use" issues are typically raised with respect to the preamble of a claim. Here, however, the language being ignored is recited in the body, not the preamble.

Moreover, MPEP 2111.02 does give an examiner a license to ignore "intended use" language. Ignoring claim language is legal error.

MPEP 2143.03 states "All words in a claim must be considered in judging the patentability of that claim against the prior art." In *re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The office action must consider the functional feature "reporting that is a function of the geographic location of the container." The office action commits legal error by failing to do so.

Omission of an essential element in '102 rejections

According to MPEP 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)."

Webb is silent about the frequency of reporting. Webb discloses a system for monitoring a security status of fixed and mobile assets (Abstract). The system includes an agent, which refers to a self-powered sensing and communicating device for monitoring a physical location and a security status of a mobile asset such as a cargo container (paragraphs 46-47). Figure 3 of Webb illustrates a plurality of containers that are transported by a transport vehicle 120, with an agent 200 connected with each of the containers 160 (paragraph 55). The agents 200 may receive position data from a GPS satellite 142, and monitor security status of the containers 160 during transport between a shipper's loading dock 60, origination port 70, and destinations 85 and 90 (paragraph 53).

An agent communicates with a global operations monitoring and analysis center (GOMAC) 50 when a possible violation to the health or integrity of the container is detected (paragraphs 57 and 73). One of the agents within range of a communications satellite 140 is designated as the primary agent to communicate with the GOMAC (paragraph 55).

Figure 8 illustrates communications between the agents and communications with the various satellites. According to paragraph 73, each agent monitors the security status of its container and transmits security status to a master control unit or the primary agent. One of the agents receives GPS data and shares that data with the other agents. Compiled security status and GPS position are transmitted via network to a primary agent, which retransmits the data to the GOMAC.

Webb does not expressly or inherently describe reporting frequency that is a function of geographic location. Therefore, the '102 rejection over Webb should be withdrawn.

Peel is silent about the frequency of reporting. Peel discloses a cargo system including shipping containers 160 aboard a cargo ship 170 (paragraph 35). Terminals 190 are attached to the containers 160 (paragraph 47). The terminals may be battery powered (paragraph 120). The terminals 190 are networked together to form an ad hoc network such as a piconet (paragraphs 47-48). Each terminal 190 in the piconet can also communicate with a communication satellite 130, GPS system 150, ship's bridge 180, Coast Guard vessel, etc. (paragraph 50). The piconet can communicate with a remote entity (e.g., a Coast Guard vessel) using either satellite communications or high power radio (paragraphs 40-41). Radio is used as backup in the event the satellite communication fails (paragraph (paragraph 41).

According to paragraph 73, routine ongoing position tracking can be performed via a GPS system. Reporting can be performed on a regular schedule or in an operator query mode. In the event of a security breach, an alarm signal would be transmitted.

Peel is silent about a schedule that is adjusted according to geographic location of the ship 170. In any event, Peel does not teach or suggest frequency of the reporting that is a function of the geographic location of the container.

Thus, Peel does not expressly or inherently describe reporting frequency that is a function of geographic location. Therefore, the '102 rejection over Peel should be withdrawn.

Omission of essential element and additional legal error in '103 rejection

Peel and Koenck are both silent about reporting frequency that is a function of geographic location. For this reason alone, the '103 rejection of claims 32 and 33 should be withdrawn.

Moreover, the '103 rejection does not comply with MPEP 2142 and the Supreme Court's holding in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). Rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

Page 7 of the office action cites paragraphs 44, 47, 77 and 91 of Koenck and alleges that it would be obvious to modify Peel's system to provide an "integrated communications means which increases efficiency in data collection and improves the functionality of the transmitting/communicating means."

The allegation consists solely of platitudes. The office action does not explain how or why efficiency of data collection would be increased, nor does it explain how functionality of transmitting or communicating would be improved. Thus, the office action offers little more than a bald conclusion of obviousness. For this additional reason, the '103 rejection of claims 32 and 33 should be withdrawn.

Legal errors in '102 rejection of dependent claims 28-31

Claims 28-31 depend indirectly from base claim 32. The office action admits that Peel does not describe all elements of base claim 32. By extension, Peel does not

disclose all elements of dependent claims 28-31. For this reason alone, the '102 rejections of claims 28-31 should be withdrawn.

The '102 rejection of claim 29 should be withdrawn for the additional reason that claim language is ignored. Claim 29 recites a CSU bridge for extending range of the wireless network communication so the CSU can operate longer in the low-power wireless network mode; and means for moving cargo containers, the CSU bridge attached to the cargo-moving means.

Pages 5 and 8 of the office action interprets the CSU bridge to read on the bridge 180 of a cargo ship (paragraph 50, line 5). To do so, the office action ignores the features about the bridge being a CSU bridge and the bridge capable of for extending range of the wireless network communication. However, Ignoring claim language is legal error. "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Peel does not disclose a CSU bridge for extending range of the wireless network communication. For this additional reason, the '102 rejection of claim 29 should be withdrawn.

Legal error in '112 rejection

The office action rejects claims 32 and 33 as being indefinite, alleging that it isn't clear whether these claims recite methods or systems. The '112 rejections should be withdrawn because there is no confusion. The preambles of both claims clearly recite systems and the bodies recite structure thereof.

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